

**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR.**

ORDER.

Smt. Kiran Malviya vs. The State of Rajasthan
& ors.

S.B. Civil Writ Petition No.5445/2004 under
Article 226 of the Constitution of India.

Date of Order: Sept. 7th ,2005.

PRESENT

HON'BLE MR. PRAKASH TATIA,J.

Mr. Vinay Jain, for the petitioner.
Mr. N.M. Lodha for the respondent.

REPORTABLE BY THE COURT:

There is no dispute so far as claim of the petitioner is concerned as the petitioner is a student of Diploma Course of Nurse/Compounder in Aayurveda as she is duly qualified and she has been given admission in the said course for the Session 2001-02. The petitioner since admitted in the Government Aayurveda Nurse/compounder Training Centre, Punjla, Jodhpur, the college which was affiliated with the Rajasthan University, Jaipur, she was eligible to appear in the examination which was to be conducted by the Rajasthan University, Jaipur for all the students of the Rajasthan University, Jaipur including the students of all affiliated colleges for the said course. In the ordinance framed under the

Rajasthan University Act, the complete procedure for admission to the course as well as examination is given in Ordinance 329-N-31.

2. For the purpose of ensuring efficient and systematic instructions, teaching, training, research and development of *Ayurved*, *Unani*, *Naturopathy*, *Homeopathy*, *Siddha* and *Yoga* system of medicines, the State of Rajasthan enacted the Rajasthan Ayurved University Act, 2002 (for short “the Act of 2002”) and established Rajasthan Ayurved University at Jodhpur. The above Act of 2002 came into force with effect from 24.5.2003. By virtue of Section 6 of the Act of 2002, all institutions educating in the field of imparting instructions, teaching, training, research and development in the subjects referred above stands affiliated with the Rajasthan Ayurved University, Jodhpur and affiliation of all the colleges imparting such education was withdrawn from Rajasthan University, Jaipur by the Act of 2002. Because of this reason only, the petitioner's college-respondent no.4-Government Ayurved Nurse/Compounder Training Centre, Punjla, Jodhpur, by operation of law became affiliated to Rajasthan Ayurved University, Jodhpur (respondent no.2) (in short Ayurved University, Jodhpur). It will be worthwhile to mention here that all existing educational institutions of Indian system for medicines and which has already obtained affiliation and recognition from any University in the State of Rajasthan stand affiliated to the newly established Ayurved University, Jodhpur

and not only this but as per sub-section (1) of Section 6 of the Act of 2002, a bar has been created against getting association in any way and against seeking admission to any privileges of any other University in the State of Rajasthan for the above mentioned subjects of *Ayurved, Unani, Naturopathy, Homeopathy, Siddha and Yoga*.

3. Since the Act was enacted in the year 2002 and the petitioner was already admitted for the course referred above in the year 2001, her college affiliation stands transferred to the Rajasthan Ayurved University, Jodhpur during currency of the Session w.e.f. 24.5.2003. By that time, the examination for the courses referred above already started under the affiliation of the colleges with the Rajasthan University. It was difficult for the Ayurved University, Jodhpur to conduct examination as there was no time left for this, therefore, by exercising power under Section 61 of the Act of 2002, the State Government issued a Notification on 13.6.2003 (Annx.1) and ordered that the examination for the academic Session 2002-03 shall be conducted by the Rajasthan University, Jaipur and the Rajasthan University, Jaipur shall award the degrees to the successful candidates for the academic Session 2002-03 in accordance with the provisions applicable to the Rajasthan University, Jaipur. In view of the Notification of the State Government dated 13.6.2003 (Annx.1), it appears that a temporary arrangement was made which was necessary

to overcome the difficulties which came in way in conducting the examination of a particular year because of paucity of time and because of the fact that examination for the said course have already started and the Ayurved University, Jodhpur was not in a position to conduct the examination. The petitioner, unfortunately because of her illness could not appear in the examination in the year 2003. The petitioner therefore, requested respondent no.4-College, for allowing her to appear in the examination when the supplementary examinations for the petitioner's course were to take place. One more student-Kaman Narayan, who though appeared in the examination for the Sessions 2002-03 held in the month of December, 2003 but he failed, therefore, he was also eligible to take examination in the supplementary examination. The petitioner's College, in turn, wrote a letter on 8.9.2003 to the Registrar, Rajasthan University, Jaipur to hold examination for the petitioner as she is a regular student of respondent no.4-College. The letter was not replied by the Rajasthan University. Then, respondent no.4-College again sent a letter to the Registrar, Rajasthan University, Jaipur on 16.10.2004 and requested that two students are suffering serious mental agony because their examinations are not being taken by the University. Yet third letter was sent to the Registrar, Rajasthan University by respondent no.4-College on 16.11.2004 pointing out that respondent no.4 has already written two letters and those letters have not been

responded. It was also pointed out that even no instructions have been issued to respondent no.4 with respect to the two students who were originally had enrollment with the Rajasthan University. In this letter dated 16.11.2004, the College requested that Ayurved University, Jodhpur is about to conduct the examination from 10.12.2004 to 24.12.2004 and, therefore, the said two students may be permitted to appear in the said examination which are to be conducted by the Ayurved University, Jodhpur. It was further pointed out that the College of both the students is at Jodhpur and both the students are also at Jodhpur and duly constituted University is also at Jodhpur, therefore, it will be just and proper to allow these two students to take examination from Ayurved University, Jodhpur.

4. The Deputy Registrar(Examinations), Rajasthan University, Jaipur responded to the respondent no.4-College letter dated 16.11.2004 and informed the respondent no.4-College that College may contact with the Registrar, Ayurved University, Jodhpur for permitting respondent no.4's two students to appear in the supplementary examination from Ayurved University, Jodhpur. The copy of this letter was forwarded to the Registrar, Ayurved University, Jodhpur. In response, the Controller of Examinations of the Ayurved University, Jodhpur informed the Deputy Registrar (Exam.), University of Rajasthan, Jaipur vide letter dated 29.11.2004 that in view of the ordinance issued by the Government of

Rajasthan dated 18.5.2004, all examinations of all the students admitted in 2002 and enrolled at University of Rajasthan, Jaipur are to be conducted by the University of Rajasthan only.

5. In the above facts, the petitioner was left in lurch as the Ayurved University constituted for specific purpose, refused to allow the petitioner to take examination and she was the only student in entire Rajasthan for whom according to Ayurved University, Jodhpur, the Rajasthan University should conduct the examination despite the fact that the subject specialty University was established by the State Government by enacting the Rajasthan Ayurved University Act, 2002 containing a provision of not only establishing the Ayurved University but it puts a restriction against seeking any admission in any other University for the course of *Ayurved, Unani, Naturopathy, Homeopathy, Siddha* and *Yoga* within the State of Rajasthan. The plea of the Ayurved University, Jodhpur is that the State Government by Notification dated 18.5.2004, by exercising power under Section 61 of the Act of 2002, directed the Rajasthan University, Jaipur to continue with the examinations for the students who were enrolled in the Rajasthan University and further directed that the degrees to those students will be awarded by the Rajasthan University.

6. As stated above, there is no dispute that the petitioner is eligible student, got the admission in the course, she is eligible to take

examination and the respondents are under obligation to make all arrangements for examination. The question is that who will conduct the examination for one student whose college is situated at Jodhpur and the University was established for awarding degree in the subject of the petitioner at Jodhpur and by the same Act by which the Ayurved University was established, the power to grant degree in the said subject from other Universities has been withdrawn. The dispute is *inter se* between the two Universities and the State Government is watching. The College Principle (Resp.no.4) tried his best to forward the matter to both the Universities and both the Universities made the petitioner a shuttle-cock. The petitioner apprehending that since the respondents are not in position to decide what to do in the matter of conducting the examination for the petitioner and she may not be allowed to appear in the examination, therefore, the petitioner preferred this writ petition before this Court without any delay and this Court while issuing notice for final disposal directed respondent nos.2 and 4(Ayurved University, Jodhpur and petitioner's College-Government Ayurveda Nurse/Compounder Training Centre, Punjla, Jodhpur) to allow the petitioner to take her examination of D.A.N.C.T. Part Ist which was scheduled from 10.12.2004. and because of this interim order only, the petitioner could appear in the examination.

7. None of the respondents looked into the matter even after notice

of the writ petition seriously as usually happens as the State or other authorities get alibi for not applying mind on the ground that “matter is pending in court” and during pendency of litigation, the State and other authorities cannot accept just claim of the petitioner! The petitioner was allowed to appear in the examination in pursuance of this Court's interim order dated 7.12.2005. Her result was not declared therefore, the petitioner on 17.2.2005 submitted an application for getting her result declared. Again the writ petition was listed in court on 2.3.2005 and on 28.3.2005 and thereafter, on 30.3.2005. On 30.3.2005, this Court after hearing counsel for the parties took note of the fact that there were only two students left out whose examinations are not being conducted by any of the Universities despite the fact that so far as the eligibility of the students is concerned, none of the University is disputing. Not only above but in the changed circumstance, only the petitioner remained eligible student to appear in the examination. This Court, therefore, after recording facts, passed the following order on 30.3.2005, the relevant portion of which is quoted herein below:-

“In these circumstances, the student, who is eligible has been given admission, has been made to suffer because of the order passed by the persons sitting above and issued directions to the Rajasthan University and to the Rajasthan Ayurveda University, Jodhpur time to time, but now they are not deciding who will take examination for one girl student. It may be possible that since it was a case relating to one student, it may have escaped the notice of the State Authorities, but the petitioner preferred the writ petition before this Court in the month of Dec., 2004, the interim

order was passed by this Court on 7.12.2004 and petitioner was permitted to take examination of DANCT Part Ist, which was going to be held from 10.12.2004. The petitioner appeared in the examination and is now seeking relief of declaration of her result so that in case she succeeds in the examination she may get the admission in higher class. It appears that Rajasthan Ayurveda University, Jodhpur is satisfied that despite giving them authority to award degree in Ayurveda subject for entire area of State of Rajasthan, for one student exams be conducted by one University in which there is no faculty. Neither Rajasthan University nor the Rajasthan Ayurveda University, Jodhpur could pursue the matter of the petitioner nor could the State authority assess what the State has done to petitioner. If the order would not have been passed by this Court, the career of the student might have been ruined by persons competent to decide the matter.

The above facts in detail only reveal that an eligible student is searching the authority who will take her examination and will grant the degree and the person sitting on the helm of affairs have shown their total inability to decide this question whether the Rajasthan University should set paper for one student for one course and keep the student with them till she gets either degree or may fail fighting the case in court. There is no dispute that Rajasthan University as well as Rajasthan Ayurveda University, Jodhpur both are taking help of the orders passed by the State Government. This Court feels that there are no feelings or touch of sentiments for a student left and the authorities like Universities cannot convince themselves or to state that what will be proper; whether for one student Rajasthan University continue the course or Ayurveda University, Jodhpur can accommodate one more student with all other students. Whether migration of one student from one University to another in consequence of orders passed by the State is impossible? The matter could have been decided by the authorities, who issued one after another order taking away right of the Rajasthan University of granting degree in the subjects involved in this matter and authorized the Rajasthan Ayurveda University, Jodhpur to grant degree and who issued the order of relaxation time to time, but are not ready to decide themselves for one

student.

Since the petitioner appeared in examination only because of the intervention of this Court for DANCT Part Ist, purpose is saved for the time being. So far as her eligibility is concerned, there is no dispute, therefore, it is directed that the State Government shall pass appropriate orders for this one petitioner so that she need not to seek any further relief from this court in this matter and in case, the State Government feels that they cannot decide, they should file affidavit in writing that despite various orders passed by them in the matter of awarding degree in the subjects for which an independent Rajasthan Ayurveda University, Jodhpur has been established by them, the State Government cannot solve the problem created by their orders.

The copy of this order be sent to the Chief Secretary, Government of Rajasthan, Jaipur as well as to the Secretary, Ayurveda Department, Jaipur”.

8. In compliance to the order of this Court dated 30.3.2005, copy of the order dated 30.3.2005 was sent to the Chief Secretary, Government of Rajasthan, Jaipur and the Secretary, Ayurved Department, Jaipur on 31.3.2005 by the office. Thereafter, the reply has been filed by the State on 11.4.2005. The stand taken in the reply was so shocking that the court had to pass yet another order in detail and copy of this subsequent order dated 12.4.2005 was also sent to the Chief Secretary and he was directed to remain present in court on 25.4.2005. The reply of the State is a good example of total not only carelessness in dealing with the problems by the administrative officers working in the State of Rajasthan but shocking example of dealing in conducting cases even at

the level of High Court. All facts also shows that how high one may be, his letter can (rather usually) be ignored by the other high authority. Meaning thereby, what to say of giving heed to grievance of public by the administrative authorities, they are least concerned with the issues raised by the persons holding high position in the Universities and in the Government. Before saying anything more, it will be worthwhile to quote the order dated 12.4.2005 which will make clear that why the courts are flooded with unnecessary litigation. The order dated 12.4.2005 passed by this Court is quoted herein below:-

“This Court after hearing learned counsel for the parties including learned counsel for the State passed a detailed order on 30.3.2005 and this Court directed as under:

“So far as her eligibility is concerned, there is no dispute, therefore, it is directed that the State Government shall pass appropriate orders for this one petitioner so that she need not to seek any further relief from this court in this matter and in case, the State Government feels that they cannot decide, they should file affidavit in writing that despite various orders passed by them in the matter of awarding degree in the subjects for which an independent Rajasthan Ayurveda University, Jodhpur has been established by them, the State Government cannot solve the problem created by their orders.”

The copy of the order dated 30.3.2005 was sent to the Chief Secretary, Government of Rajasthan, Jaipur by this Court.

After all above, the reply to the writ petition has been filed on 11.4.2005 by the State admitting that the petitioner attended the classes regularly after taking admission in Part-I of the Diploma Course and petitioner since was sick, therefore, could not appear in the examination of Part-I of the Diploma Course conducted by the Rajasthan University, Jaipur for the year 2003 and she submitted her illness certificate, which was issued by the authorized medical officer. After supporting all the pleas taken by the petitioner so far as her eligibility is concerned, her right to take examination for the course is concerned and on declaring pass, her right to get Diploma in the subject is concerned, the State requested this Court to dismiss the writ petition with costs. The reply has been filed to demonstrate that the efforts have been made for persuading the Rajasthan University, Jaipur to allow the petitioner to take examination and despite above plea of the State, the State's request is that the writ petition be dismissed with costs. After admitting petitioner's case on merit and after knowing the interim order passed by this Court on 7.12.2004 and after complying with the interim order of this Court dated 7.12.2004 for which this Court in its order dated 30.2.2005 observed as under:

“Since the petitioner appeared in examination only because of the intervention of this Court for DANCT Part Ist, she is saved for the time being.”

The State prayed that the stay petition filed by the petitioner be dismissed, at the cost of repetition, after submitting that the Rajasthan University, Jaipur should take the examination for the petitioner. This is how the State Government is functioning even after when the orders of the Courts are sent to the Chief Secretary, Government of Rajasthan, Jaipur. How the replies are filed before the High Court where anguish of the Court in dealing with the students by the State Government is more than apparent from the order itself, though may not be conveying full anguish, which was shown and is being shown in open Court by the Court. “

and thereafter it was observed:-

“It will be worthwhile to consider the reply filed by the State. There is a dispute (artificially created) between the Rajasthan Ayurveda University, Jodhpur and Rajasthan University, Jaipur. But for the orders passed by the State Government and but for enacting the Rajasthan Ayurveda Act, 2002, there was no problem for the petitioner and despite this fact, the reply has been filed by the State by appointing officer incharge, who is one of the respondent and pursuing his own stand and wants to shift burden upon other.

In the reply, the State could have disclosed the stand of the State and should have disclosed the efforts made by the State whereas the reply contains what the respondent no.4 did to pursue his cause as a Principal of the Government Ayurveda Nurse/Compounder Training Centre, Punjla, Jodhpur. In the reply of the State through such officer incharge only it has been given out what the non-petitioner no.4 has done. It will be worthwhile to quote few lines from the reply:

“page no.41- Humble answering non-petitioner no.4 wrote several letters to the Rajasthan University, Jaipur for conducting the supplementary examination for these two students.”

“page no.41- However, Rajasthan University Jaipur has written letter dated 23.11.2004 to the Humble answering non-petitioner no.4 in response to the several letters sent by the answering non-petitioner no.4 and suggested to contact the registrar, Ayurved University, Jodhpur for permitting the candidates to appear at the supplementary examination for the above two students including the petitioner.”

“page no.41- Humble answering non-petitioner no.4 also wrote letter dated 30.11.2004 to the non-petitioner no.2 and requested that these two students may be

permitted to appear in the examinations.....”

“page no.42- Humble answering non-petitioner no.4 also wrote letter dated 1.12.2004 to the non-petitioner no.3 (Rajasthan University, Jodhpur) and made request that for saving the educational career of both the students, appropriate steps may be taken.”

Question arises whether State acted or was total dependent upon respondent no.4. Question arises whether it was just and proper for the Government to demonstrate that the Government helplessly pleaded before Rajasthan University to conduct examination for one student and the Rajasthan University is not ready to oblige the State Government?

In entire reply there is no mention of any fact relating to the action taken by the State. Obvious reason may be the officer incharge who had his own interest; therefore, he explained what he did. Such officer incharge may not have even access to the Government record and, therefore, from reply it nowhere appears that what is the reply of the State to the contentions raised by the petitioner in the writ petition. Except writing that reply is on behalf of respondent no.1 (State) and on behalf of the respondent no.4, there is not a single word for the State in the reply.

It appears that the order of this Court was looked into even when those were sent to learned Chief Secretary to Government of Rajasthan the State Government demonstrated that the State Government cannot take decision much less in time, even after such a long period looking to the total period available to the petitioner for pursuing her studies for a diploma course of two years.

The question which emerges out even after the reply as submitted on behalf of respondents no.1 and 4 whether it will be just and proper for the Rajasthan University, Jaipur to conduct the examination for one student from

entire Rajasthan because of the reason that this fact is not in dispute that the stand as taken by the respondent-State, the Rajasthan University, Jaipur should take examination for one student from entire Rajasthan. This Court in its order dated 12.4.2005 again reproduced the court's observations in order 30.3.2005 as under:

"This Court in its order dated 30.3.2005 constrained to observe as under

'The above facts in detail only reveal that an eligible student is searching the authority who will take her examination and will grant the degree and the person sitting on the helm of affairs have shown their total inability to decide this question whether the Rajasthan University should set paper for one student for one course and keep the student with them till she gets either degree or may fail fighting the case in court. There is no dispute that Rajasthan University as well as Rajasthan Ayurveda University, Jodhpur both are taking help of the orders passed by the State Government. This Court feels that there is no feelings or touch of sentiments for a student left and the authorities like Universities cannot convince themselves or to state that what will be proper; whether for one student Rajasthan University continue the course or Ayurveda University, Jodhpur can accommodate one more student with all other students. Whether migration of one student from one University to another in consequence of orders passed by the State is impossible? The matter could have been decided by the authorities, who issued one after

another order taking away right of the Rajasthan University of granting degree in the subjects involved in this matter and authorized the Rajasthan Ayurveda University, Jodhpur to grant degree and who issued the order of relaxation time to time, but are not ready to decide themselves for one student.'

In view of the above facts, this Court finds no assistance from the State Government and this Court constrained to observe that State must have courage to contest the cases, if they have any courage left with them, but should not wear a mask of humbleness and should not show false sympathy to the students, which has been projected in the reply filed on behalf of the State by mentioning as under:

'Humble non-petitioners are having all the sympathy for petitioner for the purpose of saving and encouraging the educational career of a woman student and already issued various above-mentioned letters in this respect.'

It is shocking that in the same paragraph, next line is as under:

'However, issuing above referred letters will not create any right much less then fundamental right in favour of the petitioner.'

All above created a un-precedent situation before this Court and, therefore, it will be necessary to direct the Chief Secretary, Government of Rajasthan, Jaipur to appear personally before this Court to explain their working in dealing with the Court order and dealing with the cases and the manner in which the officer incharges are appointed to conduct the cases and all other matters, which may come up for consideration in this writ petition and of which note has been taken by this Court in detailed order in its order dated 30.3.2005.

The copy of this order be sent to the Chief Secretary, Government of Rajasthan, Jaipur and the Chief Secretary, Government of Rajasthan, Jaipur is directed to remain present in court on 25.4.2005.

The respondent no.2 Rajasthan Ayurveda University, Jodhpur is directed to declare the result of the petitioner and permit her to attend the classes of next year course if she is declared passed”.

9. It appears that when the copy of the order dated 12.4.2005 reached to the Chief Secretary, as sent by the office of this Court on the next date on 13.4.2005, the officers started applying mind but it appears that that was for the purpose to avoid *harassment* to the Chief Secretary of the Government of Rajasthan and, therefore, an application was submitted on 19.4.2005 stating therein that the State has passed the order canceling the enrollment of the petitioner from Rajasthan University and the Ayurved University, Jodhpur has been directed to enroll the petitioner from 2003 and now the relief has been granted to the petitioner, therefore, the writ petition may be disposed of as having become infructuous in view of the State Government's order dated 13.4.2005 and the Court may please to dispense with the personal presence of the Chief Secretary. In this application dated 19.4.2005, the State unequivocally admitted that the order dated 30.3.2005 was not understood in its correct perspective. This plea appears to has been taken to avoid embarrassment but at this stage also, the State officers

could have submitted before this Court in the light of court's observation about conducting the case before the High Court whether any step will be taken or still in the opinion of the Government, there is no need to look into all aspects of Government working in court cases. The learned Chief Secretary was not called because without his presence the Court could not have granted relief to the petitioner. The relevant portion from Para no.2 of the application is quoted, which reads as under:-

“However, it is submitted that the order dated 30.3.2005 was not understood in its correct perspective and, therefore, while filing reply, the true import of the order was not properly understood. Thereafter, the Hon'ble Court was passed order on 12.4.2005.”

10. Along with the application, the order of the State Government dated 13.4.2005 was also annexed. It appeared from the above application that the respondents, particularly the State Government could not notice that the relief to the petitioner has already been granted by the order of the High Court and the High Court was not depending upon the mercy of the State Government for deciding the issues raised by the petitioner. The State failed to notice that the court has taken a serious view in the matter of State Government's dealing in cases before the High Court.

11. The State is the biggest litigant in the High Court. The State

though is a litigant and may be treated to be at par with other litigations but if one litigant acquires a position to hamper the working of the court resulting into absolutely unnecessary litigations and if such litigant files reply without application of mind and without knowing the meaning of the stand taken by it despite the fact that the litigant (State) is keeping large number of legal experts at the cost of public money, then such litigant is answerable to court also as courts are not meant for such litigant's luxury and to satisfy their pleasure of harassing public at large and for wasting time of the court which is meant only for deciding the bonafide disputes between the parties. The State, by its position, though is a litigant, still has special position because in a frivolous litigation, cost may be imposed but in the case of exemplary cost, it may become more burden upon the public. Apart from it, the State's position as a litigant is different from private litigants who have right to even surrender their properties which is not available to the State as the State is only custodian of the State properties and real owner is public, both for movable and immovable properties. Therefore, even if any State property is lost because of inaction and wrong action of officer of the Government, it is loss to any individual but in fact to public. The High Court on several occasions passed the orders against the State but there is no slightest improvement in conducting the case before the High Court. So far as the legal pleas are concerned and so far

as legal stand is concerned, there may be different views but no one can say that “the petitioner is right, hence dismiss his/her writ petition”. Such stand of the State has nothing to do with the financial (alleged poor) position of the State which is the lame excuse which is usually a defense for all the careless acts of the State Officers.

12. The Universities must know that Hon'ble the Apex Court in dozen of cases emphasized that process of admission in colleges should be completed in time and examination schedule should not be disturbed but in this case, two Universities were exchanging letters relying upon two orders passed by the State Government but could not muster courage to press upon the State to pass appropriate order for a dispute which according to the two Universities is result of the orders passed by the State Government. One student could not have fought against the two Universities administration or against the State because the time available to student is too short looking to his entire term of studies. The petitioner student had no much time to wait for the decision and she fortunately did not fell in the trap of alleged persuasion of the Principal of the petitioner's-College for getting relief for the petitioner and she approached this Court by filing the writ petition before this Court. Her at least year was saved because this Court passed the interim order directing the respondents no.2 to 4 to allow the petitioner in the examination despite the fact that the court is fully aware that

Hon'ble the Apex Court held that the courts normally and lightly should not interfere in the internal matters of the Universities and the Colleges.

13. The writ petition of the petitioner could have been disposed of on the application of the State dated 19.4.2005 and the Chief Secretary of the State would not have to travel 300 kms. from Jaipur to Jodhpur but the court, to see that the public at large and students in particular may not suffer in future in future, facts must be brought to the personal knowledge of the learned Chief Secretary, Government of Rajasthan as despite sending orders in writing to the Chief Secretary, either they were not placed before the Chief Secretary and the State authorities or are not taken care of. It was necessary for further reason that this Court not only sent the copies of the orders passed by this Court in this matter only but sent orders in several other writ petitions to the Chief Secretary of the Government, which also show that not only the matter in deciding an issue for which there is no dispute, the State Government failed to decide but the State Government and its functionaries are not serious about the recovery of the government money and functioning of the tribunals established in the name of giving speedy justice to the public.

14. It will be worthwhile to mention here a few orders passed by this Court in the following other writ petitions:

(1) S.B. Civil WRIT PETITION NO. 293/2003(BHANWAR LAL & ANR. VS. THE STATE OF RAJ. & ANR.

In this matter relating to the Government revenue of 33 lacs, the petitioners who were alleged guarantors in an excise contract. After receipt of a notice of recovery of the amount, the petitioners submitted that they never stood guarantors. They file criminal complaint in the court of Judicial Magistrate No.3, Jodhpur under Sections 419, 420, 467, 468, 471 and 120-B, I.P.C. They also submitted a representation before the Excise Commissioner,, who stayed the recovery proceedings by order dated 26.11.2002 till the pendency of the case in the court. In the criminal case, orders were issued for submitting the original guarantee papers for sending to the Forensic Science Laboratory upon which the Excise Officer submitted an application and stated that in case original documents will be submitted, the recovery proceedings will be delayed. The learned Judicial Magistrate passed the order that the documents may be sent to the Forensic Science Laboratory after the recovery proceeding is completed. The Excise Commissioner recalled the stay order dated 26.11.2002 on 18.12.2002 by mentioning that he talked to the Addl. Commissioner, Jodhpur and, therefore, the stay order is vacated. The petitioner challenged the action of the respondent and filed the writ petition before this Court. The writ petition was filed on 21.1.2003 and recovery was stayed by this Court vide order dated

24.1.2004 and no reply has been filed by the State for the last two years. In such a matters where there are serious allegations for committing of offences punishable under the Indian Penal Code and the matter is relating to the government revenue of more than 33 lacs, by the action of the State authorities, neither the criminal proceedings could have proceeded nor the recovery proceeding could have proceeded and there was no possibility of deciding the writ petition as no reply was filed by the State. Hence it is the matter relating to the State revenue and the allegation of committing of offence by the government servant and handling of the case by the State authorities. The copy of the detail order passed by this Court on 15.2.2002 was sent to the learned Chief Secretary for appropriate action against the guilty officer. The reply was filed but that give rise to several questions which were formulated by this Court in its order dated 22.3.2005 and opportunity was given to the State to file additional affidavit by order dated 22.3.2005.

**2. S.B.CIVIL WRIT PETITION NO. 2103/2004- JAI BHARAT SERVE
KALYAN NYAS, JODHPUR**

It is a case of financial aid to the institution imparting education to blinds children. The petitioner alleged that the State did not process the request of the petitioner in a matter where the petitioner could

have got the financial aid from the Central Government. A detailed order was passed by this Court in this writ petition on 28.1.2003 and copy of the same was also sent to the learned Chief Secretary. This was a matter relating to the financial aid to a school imparting education for the blinds and the State would have been benefited by the financial help from the Central Government.

3. S.B. CIVIL WRIT PETITION NO.1121/2005- UDAIPUR CENTRAL COOPERATIVE BANK LTD. VS. SMT. PUSHPA BABEL AND ORS.

It was a case with allegation of misappropriation of huge amount of Rs.1,20,00,000/-. It was alleged that the above amount of more than one crore were embezzled by one Indra Singh Babel and he made all efforts to avoid the recovery by initiating various proceedings at various levels and was unsuccessful and he also preferred writ petition which too was dismissed by this Court. The wife of said Inder Singh Babel preferred before the Rajasthan State Corporation Tribunal against the order of the Addl. Registrar No.2, Cooperative Society(Rajasthan), Jaipur dated 13.11.2002 and therein interim order was passed on 3.1.2003 against the auction of the property of the appellant. From 3rd May, 3003, neither the appeal nor the stay petition could have been heard because of the fact that petitioner could have been heard only by a Bench of three members and there were only two members. The

position continued till February, 2005 and the Tribunal constituted to give expeditious relief to the litigants could not function for such a long period resulting into denial of justice and in this case huge revenue was involved.

(4) S.B. CIVIL WRIT PETITION NO.4920/2002- SITA RAM VS. THE STATE OF RAJASTHAN & ORS.

In this case allegation of the petitioner was that large number of criminal cases were alleged against the petitioner and the petitioner moved an application before the Hon'ble Prime Minister of India and the matter was sent to the learned Chief Secretary, Government of Rajasthan and thereafter to the Addl. Superintendent of Police, Raisinghnagar to investigate into the matter and submit report. According to the petitioner, number of cases were withdrawn after that but in some cases challans have been filed in the court of Addl. Chief Judicial Magistrate, Sri Karanpur. According to the petitioner, since all the cases were filed then all the cases should have been withdrawn by the State from the court. In the criminal case before the learned Magistrate, an application was submitted by the petitioner's son and he annexed order issued by the Addl. Superintendent of Police, Raisinghnagar dated 4.9.1998 wherein according to the petitioner it was ordered that cases to be withdrawn. It was a very serious matter

because there were large number of F.I.Rs. lodged against the petitioner and the petitioner submitted that he approached the Hon'ble Prime Minister and ultimately the Addl. Superintendent of Police passed the relevant order on the basis of which the State should have withdrawn the prosecution against the petitioner. This Court after taking note of the above facts, by order dated 21.3.2003 issued notice to the learned Chief Secretary to the Government of Rajasthan, Jaipur.

(5) S.B. CIVIL WRIT IPETITION NO.1028/2005-NARENDRA AGARWAL VS. THE STATE OF RAJASTHAN & ORS.

This was a matter relating to the revenue recovery against the petitioner pending since 1990 and the facts in detail were recorded by this Court in the order dated 27.2.2005 and copy was sent to the learned Chief Secretary, Government of Rajasthan.

15. Above are only a few recent orders which prima facie shows that in the matter in court in relation to administration of justice (C.W. No. 1121/2005), in criminal matter (C.W. No. 4920/2002), in the matter of government revenue (C.W. 293/2003, C.W. 1028/2005) in matter of education C.W. No. 2103/2004) the state should have been more vigilant. In the matter (C.W. No. 1293/2004 Smt. Arunima Jain vs. State of Rajasthan & Ors., decided on 25.2.2005) of education for teachers

training course in state of Rajasthan the state failed in taking any steps where future of thousands of students was not only involved but in fact affected adversely. I am consciously not giving references of those case which have already been decided by the High Court and the case in which strictures have been passed against the State and it's officers because the court has done what the court could have done to see improvement of government's dealing with court case. I gave references of pending cases only where even after High Court's large number of orders against the state prima facie, in above cases and finally in present case it is proved that with the decision of a case, case file is closed and it is not taken for corrections for future.

16. Apart from above, there are large number of cases in which the directions were issued to the State Government to improve their functioning in handling the cases in the courts but it appears that the order reaches to those persons who are on the post at a relevant time. After some time new officer comes on the post and he remains ignorant as his predecessor was while dealing with the court cases. In the functioning of the offices, the persons come and go and unless the track is kept, successor in office cannot take a lesson from the past incidents. Conducting a case on behalf of government is not considered as part of the duty by the government officer. It happens more when the officer in-charge is not of sufficient high rank. A lower rank officer normally

cannot muster courage even to enquire facts from his higher officer or from his own higher office. In government replies, in large number of cases, to answer the issue raised in pleadings unless facts are inquired from other offices, proper replies cannot be submitted. The lower rank officer either will, as far as possible, avoid to collect information or even he may not think to collect the factual information under impression that 'it is not related to his office' without understanding *that reply is not of the office of the officer-in-charge but the reply is on behalf and of the State Government*. Present is the example cases of such type where from reply it is clearly apparent that officer-in-charge submitted the reply which is only suitable to his own interest as principle of the college and from reading and meaningful reading of the reply, reply cannot be considered to be reply for and on behalf of and of the State.

17. In number of cases, the officer-in-charge fails to understand his position. He remains officer of the rank and officer of the office in which he is posted. Therefore, while drafting reply he takes stand and pleas befitting to his own level of position in the office and he even may try to save more himself or his office and that stand in the reply may lower down the position of the government. Present is one of glaring example of such type of cases. The officer in-charge pleaded before this court in the reply and has projected how helpless is the government.

Officer-in-charge pleaded in reply that he (not state/Govt.) made efforts and plead the case of petitioner before the Rajasthan University and the Rajasthan University is not giving any heed to the requests! By this, the officer-in-charge only lower downed the authority of the state.

18. How the officers-in-charge are appointed? Almost in all the cases barring a few, officer in-charge is appointed from the office against which grievance of the petitioner is. Because that office and officers of that office knows all the facts and reasons for action taken in the matter. This appears to proper for very many reasons inter alia; state and government can function through their departments and departments can be run by the officers of the department and they have knowledge of the facts of the cases. That department and persons directly connected with and took the decisions or are supposed to take decision can explain reasons for their act and omissions. Each and every matter therefore need not to go to the State head of department. But normally in case where two or more departments of the government or departments over which the government has control or where the government is competent to pass appropriate orders to resolve the dispute, more than one officers in-charge are appointed, by each and every govt. departments party in the litigation as though lis is not against the State but is against the department of the government. In such situation, in court we found different advocates appearing on

behalf of different departments of the government, to justify action of their department as per their instruction from the concerned department and challenge the action and omissions of other government department party in the same litigation. In such situation how any of the reply filed can be considered to be as of the State? In such two replies there may be allegation by both the government department against each other. That tantamounts to allegations of the government against itself and against its own department and against its own officers of its own department. Even if there is allegation of one of the departments against government's other department then also there cannot be any justification of the state (Government) for not correcting the said action of its own office without help of the court's order. In either case where counter allegation or unilateral allegation, normally there is no reason for the government for not applying mind, above the vested interest of the officers of the government offices who just to hide their mistakes are defending the case resulting into denial of justice to litigants and ultimately adverse orders, stricture and cost against the State and against its officers. The government, therefore, can think on this issue of appointing the officer in-charge in the case where more government departments are in the litigation. Facts referred above of this case are sufficient to learn a lesson by State. Serious mistake was committed by appointing officer in-charge from one out of two respondents in present

case caused total non-representation of the case of the state (only incidentally, state has no case on merit in this case).

19. More dangerous situation is when same person is appointed as officer in-charge against whom serious allegations are in the petitions or when that officer's own interest is involved in the subject matter. Because of above reason and for many other reasons like over zeal to win a case, reply contrary to government record is also filed. One of the reasons for such wrong reply is appointing a person who thinks that State/Department must win the case as it is his responsibility to win the case. Officers' in-charge fails in coming up to the level of state's- authorised representative. Not only officers in-charge but even up to the level of highest level the government must understand that people's government, in matter of disputes and court cases can have only one object and that is to do the justice and to act only so that justice may be achieved, no question of Ego. No question of Zeal To Win the Cases. No reason for not correcting Itself if any mistake has been committed by the Government or it's department or any office or any wing over which government has control and the government can pass appropriate orders to correct the mistake. There is no bar in correcting mistake without any delay, rather it is expected form every government to correct their mistakes even during pendency of the litigation after informing the court or after taking permission of the court if needed which depends

upon facts of each individual case. By this not only court's heavy work load will be reduced but it will reduce the department's court cases load and above all, litigants will get relief and cause of justice will advance. For this the government should develop a case-management-system, more advance than litigation- management-system. Unless Case-Management-System is enough strong there cannot be a good Litigation-Management-System.

20. Here, in present case, there is not only no dispute about the petitioner's claim but it is admitted case of all the respondents that the petitioner, a girl student is an eligible student to appear in the examination. It is admitted case that one of the Universities is under obligation to make all arrangements for her examinations. Difficulty arose because establishment of new University, i.e., Rajasthan Ayurveda University, Jodhpur and subsequent orders passed by State Government. It was not a case where the petitioner was required to have enquired where she is to take her examinations. It was the duty of the respondents to inform her where she is to appear in examination. And that was not only not done but when present writ petition has been filed respondent college of the petitioner and the State after admitting the case of the petitioner prayed that the State is helpless as Rajasthan University is not taking care of request of the State (as comes out from the reply filed by officer-in-charge of the state), and prayed that the

writ petition of the petitioner be dismissed.

21. That shows that had there been application of mind at right time and the state would have taken a decision in time, the matter would not have come to court as it is a Case-Of-No-Dispute even as per the stand of all respondents so far as the claim of the petitioner is concerned. This case further shows that the respondents failed to apply their mind to facts of the case even after this court entertained the writ petition and passed the interim order. Thereafter, again without understanding facts of the petitioner's case, without taking a reasonable view to claim of the petitioner, Ayurveda University which was established for specific purpose, insisted that for one girl from entire State of Rajasthan, the Rajasthan University, Jaipur should appoint a paper setters, print the papers for each subject of the petitioner (print one or two or may be three papers including papers for the purpose university's record), print mark sheet, and decree if needed but Ayurved University at Jodhpur will not allow only one more student in examination along with other students. Even if the petitioner would have been lone student even then in the facts of this case there was no justification for the Ayurved University, Jodhpur for not making efforts to see that the petitioner should have got the opportunity from their University. After noticing crocodile's tears in the eyes of the officer incharge of the State in this case, the court gave opportunity to the State to look into matter and

decide the dispute as it was case of no dispute so far as the petitioner's claim is concerned. Copy of the detail order dated 30.3.2005 was sent to the learned Chief Secretary with direction to decide the matter or file affidavit that state cannot take decision in this matter. As stated above, reply filed thereafter of sending the copy of order of this court to the Learned Chief Secretary of the Government of Rajasthan was so shocking that the court left with no alternative except call the learned Chief Secretary in court vide order dated 30.5.2005 "to explain their working in dealing with the Court order and dealing with the cases and the manner in which the officers incharge are appointed to conduct the cases and all other matters, which may come up for consideration in this writ petition and of which note has been taken by this Court in detailed order in its order dated 30.3.2005. This order was not properly understood and it was prayed by moving application that writ petition be dismissed as relief has been granted to the petitioner. But the larger issue was ignored.

22. Apart from above, another question comes for consideration is that how the replies of the State are drafted and filed in the High Court? The officer in-charge in this case may not be knowing what is his position and may had will to get the petition dismissed but ignored that by this he acted against his own stand throughout before and after petitioner's filing writ petition and his prayer in reply would have

destroyed all his efforts which he made for getting relief for the petitioner before petitioner filed the writ petition. How counsel for the State could have drafted and signed such a reply, admitting claim of petitioner and praying for dismissal of the writ petition. How learned counsel failed in drawing distinction between State and respondent no. 4, the college principal. Why officer in-charge was not directed to obtain factual report from State as both the Universities were not in agreement and so far respondent no. 4 is concerned he himself could not have done more than writing letters to both Universities and to government? Simply by obtaining answer of one question from the State that which of the University should have made arrangements for petitioner's examination, the matter could have come to an end. Mistakes at all level continued. State is facing one after another adverse order, paying cost, and causing accumulation of cases in the court. Officers are coming and going. Fortunate are only those who were not officer in-charge for the State in any case or who have no adverse order against them as whatever result of case may be, he need not face contempt of court proceedings against him as he is only authorized representative of the State and the State sued through whom or the officer of the department can be made party in contempt proceedings. Those persons holding high post may not come to know the facts of the case till injury is inflicted to the State and where in fact State had a

good case and not presented before the court. In such situation all forces are employed to save high officers in contempt proceedings at the cost of State expenditure. Several orders of the courts are only with interest to see that system may be developed and such situation as happened in this case and in large number of cases may be avoided and public may get the justice. First case-management system is required to be developed which provides for immediate application of mind case wise and now it is not a time to continue with litigation management only. Litigation of such a large volume the State cannot be managed unless its foundation is case-management.

23. Unless all facts are brought to personal knowledge of the head of the executive of the state, affairs are bound to continue as they are going on because what mistake was committed by the learned counsel for the State may not have come knowledge to said learned counsel because first detail order dated 30 March, 2005 was passed by this court in the presence of one learned counsel (Dy. G.A.) Just after 11 days, on 11th April, 2005, reply in question was drafted and filed by another advocate, Additional Government Advocate. And a day thereafter it, third learned advocate, Dy. Government Advocate appeared and argued the case and detail order was passed by the court. After ten days fourth advocate, Learned Government Advocate appeared before the court and submitted an application and the said application was dismissed by the

court on the same day. After that, after four days on 25 April, 2005 fifth advocate for the State, Learned Additional Advocate General appeared in this matter to represent the State and the Learned Chief Secretary. This may be exceptional case and the State may have changed it's advocates five times in short period of one month and different advocates for five continuous dates of hearing . But the position is not much different in other cases. Government advocates are not allotted the case but they are allotted the courts or cases form the cause list as per case numbers in cause list irrespective of fact who appeared and argued the case on last occasion, may it be a few days ago only. Not only this in most of the cases, cases are allotted to another advocate even when on just a day before case was argued by another advocate and he is very much present in the court but because of change in number of serial number in cause list, the case goes to another government advocate. There is no link between case and government-advocate. On first day one will appear for State and reply will be drafted by another advocate and case will be argued by third advocate, who never had any discussion with the officer-in-charge and therefore, if any court query is there, he will ask for time to call OIC and on next date another advocate will appear for State and will look blank toward court and opposite counsel to enquire why OIC was called.

24. To counter, it is often said that whoever the advocate he be, he

can argue only what has been pleaded. It is also often said that it is not possible to keep the government advocate permanently and for all times. The cases from due course comes up for hearing after several years or even after decades, therefore how advocates argue in such case. "Advocates can argue only what has been pleaded" is said by those who do not know the importance of discussion of advocate about the facts of the case with the person who has full knowledge of the facts of the case. Arguments in courts and assistance to the court are not only reading of pleadings. Best can be told by the person who has written, rest is inference of why it has been written and there is lot of difference between above two. I need not to say more on this issue because the State itself has tested for several years and in this case witnessed their working. State was answerless so far the manner in which the present case was handled at all stages and all levels. How to improve working in govt. office, it is for the government to look into but by their working courts cannot be flooded with frivolous litigations. The cases which comes up for hearing after long time and which are in the hands of private parties advocates are concerned, advocates normally call the litigant and he is assisted on facts, by the litigant himself and such opportunity is not available to the government advocates because in short time the officer and OIC of the department will change. This can be avoided, if government policy permits, by giving case to advocates,

may be from government advocate's office only so learned advocate may take that it is his case and he alone is to handle the case and the case is not 'no man's case'. Therefore, mind is required to be applied immediately on all the facts of the case to find who can be the proper OIC for the case. While deciding this question, help may be taken from the observations in preceding paras of this judgment about it. Further it is essential to find out how government department can keep the contact with the learned advocates and for that purpose legal cell with sufficient staff of every department of the govt. can be established at both the places, at Jodhpur and at Jaipur where the Principal Seat of the High court and its bench are situated. How all legal cells of the government departments shall have coordination between them? In the matter of conflict between departments, coordinators can be appointed who can settle the dispute so that conflicting replies may not be filed. Such matters, if needed, can be brought to the notice of the appropriate higher authority who can take decision which alone can be the stand of the State in the court. In this process, on finding that dispute is because of wrong (mistake) of any of the department or mistake is of more government department and petitioner has been denied the relief because of mistake, or conflicting stands of government departments or because of lack of proper communication between the departments or it was inadvertent act or omission, then petitioner's grievances can be

redressed without waiting for the decision of the court and court can be informed about intentions of the State so that court may decide the cases without any delay resulting in reducing case work load from government offices. The government will have to think about the competence of the OIC for court cases without confusing it with his ability to work on the post which he holds as two matters are separate. Principle of the college may be good and very good officer for the college but in present case he failed to raise up to the level of representing the State before this court in this case and for that also there may be several reasons as he himself could not have think that he is representing the State, he only pleaded what he did for perusing the case of the petitioner before other respondents. What he could have done as Principal of the college he did it and therefore, pleaded so in reply to the writ petition but if same is the working of the government then that working only lowers down the position of the government. Government can not plead before its subordinates nor can ignore the indifference of lower authorities or other authorities how are bound to follow the government orders and directions and instructions.

25. Therefore, it appears that the orders which were passed by the courts in past have not reached forward because of the simple reason of having no provision for keeping the all new officers aware to the mistakes which have been committed in past. This Court is concerned

only to the facts which affects the administration of justice and increases frivolous and unnecessary litigation because of inaction of the Government Departments resulting into causing delay in imparting justice to the bona-fide litigants. Many a times when question about the working of the government officer and departments comes up, a plea is taken that because of the financial crisis, the government could not do anything whereas in the matter of management of affairs of the departments, the State is suffering more because of mismanagement, rather because of the financial difficulties. Not only this but by proper case management the State can save and recover more revenue. Unless proper management is worked out for dealing the cases in the courts, by changing the advocates, no purpose would be served. It is for the Government to look into the matter and examine who they can have a track for conducting the cases properly.

26. Much can be said but it is better to say less because of the fact that still the court has faith that the Government will examine the matter to find out how they can develop a case management system and improve their working in assisting the courts. What has been mentioned above is only suggestion of the court, suggestion on the basis of work experience as advocate, for both private parties and as advocate for large number of govt. departments and for various local bodies and other departments and present experience. Suggestions are for

consideration and are not be construed as direction of the court. Ultimate decision requires consideration of suggestion of all concerned and also from Bar.

27. Before parting with I would like to mention a few facts which recently are stated in parliament in debate on 24 August, 2005 by the Hon'ble Law Minister. Hon'ble Law Minister said that our Supreme Court is deciding more cases than it ought to decide. Our Supreme Court decided thousands and lakhs of cases. So, Courts are doing very well. We have neglected this institution. I may add, In Rajasthan hundreds of cases may be more than 300 are listed every day, before every Single Bench. If state Government, party in majority of case before the high court, gives mere reasonably due care to their cases, the Rajasthan High Court may not in short time clear total backlog but at least can reduce the backlog substantially. The beneficiary is not judiciary alone but more beneficiaries will be State and most will be public at large.

28. As stated at the out-set that the writ petition could have been disposed of by this Court as the relief has been granted to the petitioner by the respondents but that would not have been just and proper because the relief to the petitioner is a relief to a one person and this Court cannot ignore that relief to other bonafide claimants have not been given by the State authorities in time and because of the inaction of the Government officers in dealing the court cases without any

consequences, the public at large is suffering a lot resulting into giving a bad name to the judiciary also for not deciding the cases expeditiously.

29. The writ petition of the petitioner is, therefore, disposed with a nominal cost of Rs.5000/- to the petitioner from respondent no.1-State.

(PRAKASH TATIA),J.

mlt.